

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1747 of 1990****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

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AYAR KALU PITHA MINOR - Appellant(s)
Versus
KOLI KESHU CHHAGAN & 3 - Defendant(s)

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Appearance :

MR DD VYAS for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.
NOTICE UNSERVED for Defendant(s) : 3,
MS MEGHA JANI for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 08/08/2006****ORAL JUDGMENT**

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal, Rajkot passed in Claim Case No.70 of 1976 dated 31.03.1978.

2.0 The brief facts of the case are that on 30.03.1976, the present appellant was dashed by a public carrier driven by the present opponent No.1 and owned by present opponent No.2 at the

relevant time. It may be noted that opponent No.3 was subsequently joined as a party since the vehicle in question stood registered and insured in his name. On account of the accident in question, the appellant received serious bodily injuries, and therefore, he filed an application claiming an amount of Rs.9,999/- by way of compensation.

2.1 In the said application, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard learned Counsel for the appellant as well as opponent No.4. Though, served none appears on behalf of the opponent Nos. 1 to 3. On perusal of evidence of police constable Khanubha (Exh.36) and 'Panchnama' of the scene of offence it clearly transpires that the width of the tar road at the place of incident is about 32' feet and there is a metal road of about 10' feet on both the sides of the road. Therefore, it

can be said that the breadth of the road was sufficient. From the 'Panchnama' it also transpires that there were no brake marks and the blood of the appellant was found at a distance of 5' feet from the right side front wheel of the vehicle in question, which clearly leads to the conclusion that the vehicle in question was being driven in rash and negligent manner so as to endanger human life. I am, therefore, of the opinion that the Tribunal has rightly held that the accident in question took place on account of the sole negligence on the part of the opponent No.1, and hence, the appellant is entitled for compensation.

3.1 As regards the contention of the learned Advocate for the appellant that the Tribunal ought to have held opponent No.3 liable to satisfy the claim is concerned, it is required to be noted that the opponent No.2-himself has deposed that he had purchased the vehicle in question from the opponent No.2 and, though, the

vehicle was stood registered and insured in the name of opponent No.3 he was paying the tax and premium for the said vehicle. The opponent No.2 has further stated that the sale transaction was completed prior to 30.03.1987, and therefore, the Tribunal has rightly held that since opponent No.2 was the owner of the vehicle in question at the relevant time, opponent No.3 cannot be held liable to satisfy the claim.

3.2 As regards the contention of the learned Advocate regarding liability of opponent No.4- Insurance Company is concerned, it would be relevant to refer to a decision of the Apex Court passed in the case of ***"Rikhi Ram and Another Vs. Sukhrania (Smt) And Others"*** reported in (2003) 3 SCC 97 wherein it was held that under the provisions of Section 94 of the Motor Vehicle Act, once the vehicle is insured, besides owner, other person can also use the vehicle with the consent of the owner. In the case on hand, the opponent No.2 himself has admitted that, though,

vehicle in question stood registered and insured in the name of the opponent No.3, he was paying the premium and tax in respect of the said vehicle. It may be further noted that the opponent No.2, except making bare statement, has failed to prove that he was driving the vehicle in question with the consent and permission of opponent No.3, and hence, the tribunal has rightly exonerated the opponent No.4 from the liability to satisfy the claim.

3.3 While considering the aspect of compensation, the Tribunal has taken into consideration medical and other evidence available on record. Looking to the nature of injuries and disability sustained by the appellant and the period of hospitalization, the compensation awarded by the Tribunal, in my opinion, is just and reasonable. No case has been made out by the appellant for enhancement of the amount of compensation. I am, therefore, in complete agreement with the reasonings given and

the findings arrived at by the Tribunal and, hence, do not find any reason to interfere in this appeal.

4.0 In the result, the appeal is dismissed.
No order as to costs.

(K. S. Jhaveri, J.)

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